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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED
MAY 4 2005
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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Mitutoyo Corporation,
Mitutoyo America Corporation
and
Hexagon Metrology Nordic AB,
Plaintiffs,
v.
Central Purchasing, LLC,
Defendant.

Civil Action No. 03C 0990
Honorable Samuel Der-Yeghiayan

**PLAINTIFFS' MOTION FOR RECONSIDERATION
OF THE APRIL 21, 2005 ORDER AND REINSTATEMENT
OF PLAINTIFFS' CLAIM OF WILLFUL INFRINGEMENT**

Plaintiffs Mitutoyo Corporation, Mitutoyo America Corporation and Hexagon Metrology Nordic AB respectfully request that the Court reconsider the April 21, 2005 Order and reinstate plaintiffs' claim of willful infringement of U.S. Patent No. 4,743,902 against defendant Central Purchasing, LLC.

The April 21, 2005 Order states:

Plaintiffs having failed to sufficiently inform the court that they intended to pursue a willful infringement claim and having advised the court in their summary judgment motion that the only issue left was whether there was an infringement, it is too late at this juncture to bring this issue before the court.

Plaintiffs respectfully submit that the April 21, 2005 Order is legally incorrect with regard to the alleged waiver of plaintiffs' claim of willful infringement because plaintiffs are not legally required to plead willfulness pursuant to the stringent standard of specificity set forth in the

Order and there is no legal requirement that plaintiffs had to move for summary judgment as to the willful infringement issue to preserve the issue for trial. There may be a misunderstanding in this regard in that willful infringement is a damages issue, and not a liability issue. Additionally, the April 21, 2005 Order is factually incorrect because the record is replete with references evidencing (1) plaintiffs' intention to pursue a claim of willful infringement; (2) plaintiffs' (and defendant's) statements to the Court that plaintiffs are pursuing (and defendant is defending against) a claim of willful infringement; and (3) the Court's acknowledgement of plaintiffs' claim of willful infringement.

For the reasons set forth above, and as further explained in the accompanying supporting memorandum and exhibits, plaintiffs respectfully request that the Court reconsider the April 21, 2005 Order and reinstate plaintiffs' claim of willful infringement.

Respectfully submitted,

MITUTOYO CORPORATION,
MITUTOYO AMERICA CORPORATION and
HEXAGON METROLOGY NORDIC AB

Date: May 4, 2005

By:



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